

FOLEY & LARDNER LLP

ONE MARITIME PLAZA, SIXTH FLOOR
SAN FRANCISCO, CA 94111-3409
TELEPHONE: 415.434.4484
FACSIMILE: 415.434.4507

LAURENCE R. ARNOLD, CA BAR NO. 133715
EILEEN R. RIDLEY, CA BAR NO. 151735
SCOTT P. INCIARDI, CA BAR NO. 228814
Attorneys for Petitioners Stanford Hospital & Clinics
and Lucile Packard Children's Hospital

**WEINBERG, ROGER & ROSENFELD
A PROFESSIONAL CORPORATION**

1001 MARINA VILLAGE PARKWAY, SUITE 200
ALAMEDA, CA 94501-1091
TELEPHONE: 510.337.1001
FACSIMILE: 510.337.1023

VINCENT A. HARRINGTON, JR., CA BAR NO. 071119
BRUCE HARLAND, CA BAR NO. 230477
Attorneys for Respondent,
Service Employees International Union, Local 715

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**STANFORD HOSPITAL & CLINICS and
LUCILE PACKARD CHILDREN'S
HOSPITAL**

Petitioners,

v.

**SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 715**

Respondent.

Case No: C-07-CV-05158-JF

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Judge: Hon. Jeremy Fogel

Pursuant to Local Rule 16-9 and the Court's "Standing Order For All Judges Of The Northern District Of California; Contents Of Joint Case Management Statement" (the "Standing Order"), Petitioners Stanford Hospital & Clinics and Lucile Packard Children's Hospital (the "Hospitals") and Respondent Service Employees International Union, Local 715 (the "Union") respectfully submit their Joint Case Management Conference Statement.

1 **I. JURISDICTION AND SERVICE**

2 The Court has personal jurisdiction by virtue of, Section 301 of the Labor-Management
3 Relations Act of 1947 (hereinafter "Section 301"). 29 U.S.C. § 185. The Petition was served on
4 the Union by personal service on October 18, 2007.

5 **II. FACTS**

6 The Hospitals and the Union (sometimes collectively referred to as the "Parties") are
7 signatory to a collective bargaining agreement (the "Agreement") effective between January 20,
8 2006 through November 4, 2008. The Agreement covers certain classifications of the Hospitals'
9 employees, including the job classification known as "Anesthesia Tech" ("Tech"). The
10 Agreement sets forth a procedure for processing and adjusting grievances culminating in
11 arbitration.

12 The Agreement contains provisions pertaining to the jurisdiction and powers of
13 arbitrators to hear and decide grievances. Article 26.1.1 defines a "grievance" as "a claim during
14 the term of this Agreement that the Employer has violated this Agreement . . ." Article 26.7.3 of
15 the Agreement provides that, in the event that a grievance is taken to arbitration, "[t]he
16 arbitrator's authority will be limited to interpreting the specific provisions of this Agreement and
17 will have no power to add to, subtract from, or to change any part of the terms or conditions of
18 this Agreement." Article 26.7.10 further provides that "[t]he arbitrator's authority will be limited
19 to determining whether the Employer has violated the provision(s) of this Agreement. The
20 arbitrator will not have jurisdiction or authority to add to, amend, modify, nullify, or ignore in
21 any way the provisions of this Agreement, and will not make any award that would, in effect,
22 grant the Union or the employee(s) any matters that were not obtained in the negotiation
23 process."

24 Article 2 of the Agreement sets forth certain "management rights" reserved to the
25 Hospitals under the Agreement. Among the rights specifically reserved to the Hospitals by
26 Article 2 are the rights to "direct and assign the work force," "to abolish, create, alter or combine
27 job classifications," "to introduce new or improved equipment, facilities or operations," and "to
28

determine whether employees, both within and without the bargaining unit, will or will not perform certain functions, duties or tasks.” Article 2 further states that the Hospitals “may, in its discretion, continue any current policies and practices which do not conflict with express written provisions of this Agreement.”

9. Article 18 of the Agreement sets forth provisions governing “work rules” and states, in part, that “[t]he Employer has the right at its discretion to promulgate, alter, modify, amend, rescind, and enforce work rules which are not inconsistent with this Agreement.” Article 18 defines “work rules” as “rules promulgated by the Employer, or a particular department or departments thereof, within its discretion, that regulate employees relative to and affecting their employment.”

10. Article 28 of the Agreement is titled “waiver” and states in relevant part that “[t]he Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other will not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement, or with respect to any subject or matter not specifically referred to or covered by this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed the Agreement.”

11. Article 9 of the Agreement, titled “temporary assignment,” governs the conditions under which employees covered by the Agreement may become entitled to premium payments known as “relief in higher classification” or “RHC” pay. Article 9 states in relevant part:

An employee temporarily assigned by the Employer to perform the typical duties of a position in a higher pay grade for four (4) consecutive hours or more will receive a differential of five percent (5%) for each grade above the grade of the employee’s regular classification for all hours during which the employee is so assigned (e.g., if an employee in Grade SEIU0006 is assigned to a position in SEIU0008 the employee will receive a differential of ten percent (10%)). As an exception if an employee is assigned by the Employer to a position in a lead classification listed in Appendix A and to perform all of the duties thereof, the employee

1 will be paid a lead premium of five percent (5%) for the actual
2 hours worked in the lead position provided the lead position is in a
3 classification in a higher wage range than the employee's regular
4 classification or position.

5 On or around April 25, 2006, the Union filed a grievance (the "Grievance") alleging that
6 the Hospitals violated Article 9 of the Agreement by refusing to pay RHC pay to techs who
7 carried a "Spectralink" telephone ("Spectralink") in the Main Operating Room ("Main O.R.") of
8 the Hospitals. The Grievance was submitted to Paul D. Staudohar (the "Arbitrator") for
9 arbitration.

10 In its post-hearing brief to the Arbitrator, the Union argued the applicability of these
11 contract clauses, and in favor of a "binding past practice" arising out of the implementation of
12 Article 9. The Employer argued, *inter alia*, that the Arbitrator had no authority to consider or
13 apply any alleged "binding past practice" and, in the alternative, that the Union had not
14 established that there was a "binding past practice."

15 The Arbitrator issued a "Decision and Award" (the "Award") on July 2, 2007. In the
16 Award the Arbitrator found that there had existed for some time under the prior Agreement a
17 "past practice" of paying a five percent "differential wage" to Anesthesia Techs who carried the
18 Spectralink, and that this practice continued for a period of time under the new Agreement. The
19 Arbitrator concluded, based on the undisputed evidence, that in early 2006 Stanford ended the
20 payment of the Spectralink differential, purportedly because such payments were not authorized
21 by the Agreement, but without securing the Union's "consent or approval." The Arbitrator
22 concluded that, "the Employer violated Article 9 of the collective bargaining agreement when it
23 terminated the five percent differential to Anesthesia Techs who were assigned to carry the
24 Spectralink telephone on shifts in the Main Operating Room. The remedy is restoration of the
25 five percent differential and making whole of [anesthesia techs] in the Main Operating Room for
26 lost wages. The differential will remain in effect unless and until altered by mutual agreement of
27 the Parties."

1 The Hospitals filed the instant Petition to Vacate on October 9, 2007, less than 100 days
 2 after service of the Award, which Award was dated July 2, 2007. Service of the Petition on the
 3 Union was effectuated on October 18, 2007.

4 **III. LEGAL ISSUES**

5 The legal issue is whether the Award must be vacated under Section 301 of the Labor
 6 Management Relations Act because it is invalid in that it fails to draw its essence from the
 7 Agreement and/or does not represent a plausible interpretation of the Agreement. The Hospitals
 8 contend that the Award is invalid in the following respects:

- 9 1) The Award ignores, modifies, and/or contradicts multiple provisions of the
- 10 Agreement, including Articles 2, 9, 18, 26, and 28;
- 11 2) The Award decided issues that were not submitted to the Arbitrator;
- 12 3) The Award decided issues that were not arbitrable under the Agreement.

13 The Union contends that the Award is valid and enforceable because it draws its essence
 14 from the Agreement, represents a plausible interpretation of the Agreement, and resolves issues
 15 expressly submitted for decision by the parties, or questions reasonably determined as necessary
 16 by the Arbitrator to decide the question submitted. Further, the Union contends that the petition
 17 to vacate the arbitration award is untimely because it was not filed and served on the Union
 18 within 100 days of the date of the service of a signed copy of the Award on the Employer as
 19 required by California C.C.P. § 1288(a). Alternatively, the Union contends the petition to vacate
 20 is untimely under the Federal Arbitration Act (9 U.S.C. § 12), should it be argued to apply,
 21 because the notice of motion to vacate the award was not served upon either the Union or the
 22 attorney for the Union "within 3 months" after the Award was filed or delivered.

23 **IV. MOTIONS**

24 The Parties filed a joint motion for relief from the then-applicable case management
 25 conference schedule in December, 2008, which motion was granted on January 4, 2008. On
 26 January 16, 2008, the Hospitals filed a motion seeking to reassign the case to the San Jose
 27 District, which motion was granted on January 31, 2008. On January 18, 2008, the Union filed

1 motions seeking to declare this case related to Case Nos C-08-0215-JCS, C-08-0213-EMC, and
2 C-08-0216-JL. By an order dated February 29, 2008, the Court declared the above-referenced
3 cases related.

4 The Parties expect that a dispositive motion (or motions) will be filed in the near future
5 seeking adjudication of all material issues in this case.

6 **V. AMENDMENT OF PLEADINGS**

7 The Hospitals do not anticipate amending any of its pleadings, but reserve the right to do
8 so. The Parties propose a deadline for amending the pleadings of June 15, 2008.

9 **VI. EVIDENCE PRESERVATION**

10 The evidence relevant to the issues in this case is expected to be limited to the
11 Agreement, the Award, and the transcripts, exhibits, and briefs filed in connection with the
12 arbitration proceedings and the pleadings and other documents on file in this matter. The Parties
13 have taken all necessary steps to preserve this evidence.

14 **VII. DISCLOSURES**

15 Under Federal Rule of Procedure 26(a)(1)(E), this action is exempt from the requirement
16 of Rule 26(a) disclosures. The Parties have made arrangements for an informal exchange of
17 documents and information (see "Discovery" below).

18 **VIII. DISCOVERY**

19 The Parties have not conducted any discovery to date. The Parties believe and anticipate
20 that all the evidence that will be relied upon in the case is already in the possession of the parties
21 or can be exchanged informally without the need for formal discovery. The Parties have made
22 arrangements for the informal exchange of evidence to the extent that either party contends that
23 it is not in possession of relevant evidence.

24 In the absence of stipulations, or in the event that the Parties cannot reach informal
25 agreement concerning the exchange of evidence, the Parties intend to utilize formal discovery
26 procedures, including interrogatories, requests for admissions, requests for production of
27 documents, and depositions. Additionally, in the absence of a stipulation, the Union intends to

utilize Request for Admissions to establish the dates of the filing and service of the Petition, and the arguments presented by the parties to the Arbitrator.

IX. CLASS ACTIONS

Neither party has asserted any claims or defenses on behalf of a class.

X. RELATED CASES

Pursuant to the Court's order dated February 29, 2008, this case is related to the following cases:

- *Service Employees International Union, Local 715 v. Stanford Hospital And Clinics And Lucile Packard Children's Hospital*; C-08-00213-JF
- *Service Employees International Union, Local 715 v. Stanford Hospital And Clinics And Lucile Packard Children's Hospital*; C-08-00215-JF
- *Service Employees International Union, Local 715 v. Stanford Hospital And Clinics And Lucile Packard Children's Hospital*; C-08-00215-JF

With the exception of the above-listed cases, the Parties are not aware of any related cases or proceedings pending before another judge of this court, or before another court or administrative body.

XI. RELIEF

The Hospitals seek an order by this Court vacating the Award and directing the submission of the Grievance to a new arbitrator to be selected by the Parties under the procedures set forth in the Agreement, that the Court award the Hospitals' costs, and such other and further relief that the Court may deem proper.

The Union seeks an order by this Court denying the Petition to Vacate, and entering a new and different order confirming the Award, attorneys fees and costs incurred on the ground that the Petition is submitted in bad faith and is meritless, and such other and further relief that appears just and proper under the circumstances.

XII. SETTLEMENT AND ADR

The Parties believe that settlement of the case is unlikely at this point. The Parties have not engaged in any ADR efforts to date, and do not believe that such efforts would be helpful at this stage, as the case is likely to be resolved by motion. In the event that the parties are required to select an ADR procedure, the Parties are agreeable to Early Neutral Evaluation.

XIII. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES

The Parties do not consent to have a magistrate judge conduct all further proceedings including trial and entry of judgment.

XIV. OTHER REFERENCES

The Parties do not believe that the case is suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

XV. NARROWING OF ISSUES

The Parties believe that all the factual and legal issues in the case can be resolved by motion.

XVI. EXPEDITED SCHEDULE

As the case is likely to be resolved through a motion, the Parties do not believe that it is necessary to establish an expedited schedule.

XVII. SCHEDULING

The Parties believe that this case will be resolved by a dispositive motion, and propose that the determination of dates for designation of experts, discovery cutoff, and pretrial conference and trial be postponed until after the resolution of such motion, if necessary.

XVIII. TRIAL

Neither party has requested a jury trial. While the Parties believe it is very unlikely that a trial will be necessary in this case, in the event that a trial becomes necessary, the Parties expect the trial to last one (1) to two (2) days.

///

///

XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS

The Hospitals have filed a "Certification Of Interested Entities Or Persons" with the Court. Additionally, in accordance with the Court's Standing Order, counsel for the Hospitals certifies as follows:

The following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

- Paul D. Staudohar, served as arbitrator in the arbitration at issue in this proceeding, and therefore may have a non-financial interest in the subject matter that could be substantially affected by the outcome of this proceeding.

The Union has not filed a "Certification Of Interested Entities Or Persons" with the Court. Additionally, in accordance with the Court's Standing Order, counsel for the Union certifies as follows:

The following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

Bargaining unit employees who may be entitled to the benefits of the Arbitrator's award reinstating the five percent differential, and making affected employees whole for any lost wages arising from the employer's elimination of the differential are potential interested persons affected by the outcome of this proceeding. The specific identities of those employees are presently not known to counsel for the Union.

///

///

///

///

1
2 Dated: March 14, 2008

FOLEY & LARDNER LLP
LAURENCE R. ARNOLD
EILEEN R. RIDLEY
SCOTT P. INCIARDI

3
4
5
6 By: 

EILEEN R. RIDLEY
Attorneys for Petitioners
Stanford Hospital & Clinics and Lucile
Packard Children's Hospital

7
8
9 Dated: March 14, 2008

WEINBERG, ROGER & ROSENFELD
VINCENT A. HARRINGTON, JR.

10
11
12 By: 

VINCENT A. HARRINGTON, JR.
Attorneys for Respondent
Service Employees International Union,
Local 715